

QUESTION ANSWERED:

How Laws are to be understood, and obedience yeelded?

Necessary for the present state of things, Touching the MILITIA.

Question.

Now in our extreame distractions, when forraigne forces threaten, and probably are invited, and a malignant and Popish party at home offended? The Devill hath cast a bone, and rais'd a contestation between the King and Parliament touching the Militia. His Majestie claimes the disposing of it to be in Him by right of Law; The Parliament saith *rebus sic stantibus*, and *nolenti Rege*, the Ordering of it is in them?

Answer.

Which Question, may receive its solution by this distinction. That there is in Laws an equitable, and a litterall sence. His Majesty (let it be granted) is intrusted by Law with the *Militia*, but it's for the good and preservation of the Republique, against Forraigne Invasions or domesticke rebellions. For it cannot be supposed that the *Parliament* would ever by Law intrust the King with the *Militia* against themselves, or the Commonwealth, that intrusts them to provide for their weale, not for their woe. So that when there is certain appearance or grounded suspition, that the Letter of the Law shall be improved against the equity of it (that is, the publicke good, whether of the body reall or representative) then the Commander going against its equity, gives liberty to the Commanded to refuse obedience to the Letter: for the Law taken abstract from its originall reason and end, is made a shell without a kernell, a shadow without a substance, and a body without a soule. It is the execution of Laws according to their equity and reason, which (as I may say) is the spirit that gives life to Authority, the Letter kills.

Nor need this equity be expressed in the Law, being so naturally implied and supposed in all Laws that are not meerely Imperiall, from that analogie which all bodies Politicke hold with the Naturall; whence all government and Governours borrow a proportionable respect; And therefore when the *Militia* of an Army is committed to the Generall, it is not with any expresse condition, that he shall not turn the mouths of his Cannons against his own Souldiers, for that is so naturally and necessarily implied, that its needlesse to be expressed, insomuch as if he did attempt or command such a thing against the nature of his trust and place, it did *ipso facto* estate the Army, in a right of disobedience, except we thinke that obedience binds Men to cut their owne throats, or at least their companions.

And indeed if this distinction be not allowed, then the legall and mixt *Monarchy* is the greatest *Tiranny*, for if Laws invest the King in an absolute power, and the letter be not controled by the equity, then whereas other Kings that are absolute *Monarcks* and rule by will, and not by Law, are *Tyrants* perforce. Those that rule by Law and not by will, have hereby a *Tiranny* confer'd upon them legally, and so the very end of Laws, which is to give bounds and limits to the exorbitant wills of Princes, is by the Lawes themselves disapointed, for they hereby give corroboration (and much more iustification) to an arbitrary *Tyranny*, by making it legall, not assumed; which Laws are ordained to crosse nor countenance: and therefore is the letter (where it seems absolute) alwaies to receive qualification from the equity, else the foresaid absurdity must follow.

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Charles 2

QUESTIONS AND ANSWERS

Necessity for the present

Continued

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